

Original Doc.

Return to
Tracy
for filing

JUN 12 2008

U.S. District Court
Northern District of California

FILED

JUN 12 2008

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

JEFFREY W. TAM

Plaintiff

v.

JOHN E. POTTER

Defendant

No. 07-2747 SI

REPLYING TO DEFENDANT'S MOTION
FOR SUMMARY JUDGMENT

Date: June 12, 2008

Re: Jeffrey W. Tam v. John E. Potter, Postmaster General, United States Postal Services
C07-02747 SI

I am over 18 years of age, am a resident of the State of California, am an employee of the
United State Postal Services. The statement contained in this declaration are within my
personal knowledge.

Plaintiff replies/responds to the defendant's motion for summary judgment.

- 1 The Collective Bargaining Agreement is a lawful contract between the American Postal
Workers Union and the U.S. Postal Service. The defendant (USPS management) should
comply this contract, but the defendant violated the contract to create the hazard
work schedule and unfair work/time standard to hurt the plaintiff physically and mentally.
The Union failed to represent the Plaintiff. The Plaintiff did not have the Collective

No. 07-2747 IS

Date: June 12, 2008

bargaining Agreement until year 2006. The Article 15 of this Agreement states that any employee who feels aggrieved must discuss the grievance with the employee's immediate supervisor within 14 days of the date on which the employee or the Union first learned or may reasonably have been expected to have learned of its cause. Plaintiff had made discussion with the Management on the issues and filed the grievance. However, the Management lied to the EEO judge, which stopped the . transfer to go back to drive.

The Union informed me that I was no longer a clerk to file any grievance. The defendant should acknowledges the Collective Bargaining Agreement; however, the defendant did not comply this contract and continue to violate the Bargaining Agreement. Therefore, this case #. 07-2747 SI is filed to the court for a fair judgment.

Attached are the exhibits from the transcript.

- A Deposition of Keith M. Inouye - December 26 ,2007 (Exhibit 1-31)
- B Deposition of Mr. Henry Orozco - January 15, 2008 (Exhibit 1-7)
- C Deposition of Ms. Barbara Delley - January 31, 2008 (Exhibit 1)
- D Deposition of Mr. Balvinder Chadha - February 6, 2008 (Exhibit 1-11)
- E Deposition of Ms. Toya Jackson - February 6, 2008
- F Deposition of Mr. Ernest Johnson - February 19, 2008
- G Deposition of Mr. Frank Taylor - February 19, 2008 (Exhibit 1)
- H Deposition of Ms. Gloria Benavides - February 20, 2008 (Exhibit 1-2)
- I Deposition of Ms. Deborah Nails - February 20, 2008 (Exhibit 1-2)
- J Deposition of Mr. Lucious Paulk - February 20, 2008
- K Class Action on contractual grievance

- 2 Plaintiff has talked to Mr. Keith Inouye, the Manager of Transportation Networks, United States Postal Service several times regarding the supervisor position promotion. There were other worker filed complaint also, but they were not intimidated. On October 26, 2004, an EEO complaint, # 94-0004-05, has filed to report that Mr. Inouye had approached and intimidated the plaintiff. Mr. Inouye discriminated against the plaintiff when he applied for the supervisor position in year 1999, 2000, 2001, 2002 & 2003. Mr. Inouye hired Mr. Bussby and Ms. Barbara Thomson, African Americans and Ms. Gloria Benvaides, a Hispanic as bulk mail supervisors. This violated Article 33, any position in the Motor Vehicle craft should promote

1
2 No. 07-2747 IS

3
4 Date: June 12, 2008

5
6 in the unit first. The three Mail handlers were promoted at the first try. Also mail
7 processing and delivery unit supervisor promotion requires going through Associate
8 Supervisor Program, but the Motor Vehicle supervisor promotion does not.
9 They were mail handlers, without Transportation and Network unit experience were
10 promoted to be supervisors. When they were selected, plaintiff had 19 years of
11 tractor-trailer operator and 3 years of bulk mail assistant experience. Plaintiff was
12 also detailed as an acting supervisor. Plaintiff knew the operation in the Transportation
13 and Networks unit well. When plaintiff confronted with Mr. Inouye, why he promoted
14 Mr. Bussby. Mr. Inouye said he chose Mr. Bussby over the plaintiff because Mr. Bussby
15 had a better resume than the plaintiff. The Plaintiff was not allowed to be in any
16 selection process or review board. There was no board review like Mr. Inouye said.
17 about the review board. Mr. Inouye had issued many disqualification letter to many
18 Motor Craft acting supervisor applicants. (Frank Taylor's disposition)

19 I also confronted Mr. Inouye why he chose to promote Ms. Benavides. Mr. Inouye
20 replied that he wanted to give the job opportunity to people outside the unit.

21 Mr. Inouye also said Ms. Gloria Benavides had waited too long for the position;
22 therefore, she was offered for the position in year 2002.

23 On September 23, 2004, Mr. Inouye approached and intimidated the plaintiff
24 and said the plaintiff fought against the system. The plaintiff replied to Mr. Inouye
25 that the plaintiff could run the operation better than the three promoted candidates.
26 Mr. Inouye had claimed in the deposition that he used a Review Board to aid him in the
27 selection process to promote. There was no Review Board for year 1999, 2000 or
28 2003. The Plaintiff was not allowed in the selection process. The Plaintiff only
29 received an interview in year 2003. However, there is no Review Board members
30 or selected candidates listing is provided when requesting for the document production.
31 Mr. Inouye has not complied with the USPS Collective Bargaining Agreement Article 33.
32 Mr. Inouye lie about there were boards in each promotion. The defendant refused to
33 provide the Board members, the results of the board interview and the qualification
34 of the applicants. Other Bulk Mail Assistants also filed EEO complaints or grievances,
35 they were not intimidated by the Management. The intimation EEO complaint was
36 dismissed; therefore, Plaintiff brought the complaints to the Federal court for judgment.

37
38 3 Plaintiff suffered from those bad starting hours. There were no tour 1 or tour relief
39 or tour 3 position. Plaintiff requested to go back to drive in year 2002. Plaintiff
40
41
42
43

1
2 No. 07-2747 IS
3

4 Date: June 12, 2008
5

6 received the driving training in year 2002, but Mr. Inouye stopped plaintiff to go back
7 to drive. Plaintiff has made numerous requests to the Management to change the work
8 hours and to transfer back to drive. The year 2003 schedule was set to relieve tour 1
9 and tour 3 also. This year 2003 schedule set up has no benefit to the SUPS.

10 EEO case # 1F-946-0113-03 has been filed to change the work schedule.
11 The Management only allowed the year 2004 working hours from the 2300 hours
12 starting hours to 0430 hours on Thursday and Friday. The year 2005 was
13 scheduled at a more harsh work hours, five different starting hours and two
14 split day off. The schedule violated Article 1, 8, 14 & 34. The plaintiff was suppose
15 a tour 2 relief; Management scheduled Plaintiff to work all three tours. The year 2005
16 Wed 1900 hours scheduled hours for the plaintiff. This work schedule set up
17 was not necessary because there were 3 staffs in the office. There was no need
18 for the third staff; it was not cost effective to schedule an extra third staff. The
19 Management constituted the retaliation by setting up the harsh work schedule
20 for the plaintiff year after year. The Wed start hour was 1900 and ended at 0330, then
21 on Thurs started at 1500. The Union allowed the Management to violate the USPS
22 Bargaining Agreement Article 1.6, 8, 14 and 34 A, B, and C for Work and/or Time
23 Standards. Plaintiff had no choice but to file the lawsuit with the Federal court to
24 determine the lawful practice.
25

26 4 Management had failed to allow Plaintiff to go back to drive in year 2002, even the
27 driving training session was completed. Three Bulk Mail Assistants (clerks), Mr. Norman
28 Davis, Ms. Debbie Nails and Mr. Denny Clark had received the "Full-time" driving
29

30 position in MVO. Ms. Debbie Nails, who transferred to the Bulk Mail Assistant
31 jobs within 90 days and then transferred back to the driving job. She could get
32 back the driver job and the seniority back. The Collective Bargaining Agreement
33 Article 39, stated that Employees who change, or have changed, from one designation
34 to another and who during continuous employment in the Motor Vehicle Service and
35 in the same installation return to the former position designation and salary level regain
36 the seniority they had in that position. Transfer back within the 90 days, employees
37 retain the sonority and over 90 days the sonority does not retain.. Plaintiff had requested
38 a hold down, Management honored those operator who had lower seniority date than he did.
39 **In Mr. Inouye's disposition exhibit 25, page 5, he explained that in order to receive**
40 **a reassignment, there must be a vacant position available.** According to Mr. Inouye's
41
42
43

1 No. 07-2747 IS

2
3 Date: June 12, 2008

4
5 disposition exhibit 23, there were 12 residual driver position, but Mr. Inouye did not
6 allow the Plaintiff to go back to drive even the plaintiff submitted a written request
7 to transfer back to drive, when Mr. Reinosa, a driver, passed away in September 2002.
8 The request to go back to drive was due to the harsh work hours. Management knew that
9 the plaintiff had the lowest seniority in the Motor Vehicle unit. No one would choose the
10 harsh work schedule, it would be left for the Plaintiff. In year 2003, Management
11 maliciously scheduled the relief run to relieve tour 1 (2300 hour) instead of tour 2 relief
12 (0700 hour). EEO complaint # 1F-946-0113-03 has been filed to enhance a more
13 reasonable work schedule. However, only partial changes had been made, (0430 hour)
14 starting hour for both Thurs & Fri was offered by Management instead of (0700 hour).
15 The mediator advised to accept the Management offer. For year 2005, Plaintiff continued
16 to set up hazard work schedule, split day off, five different starting hours. Plaintiff maliciously
17 set up an even more harsh work schedule for the Plaintiff, who had the least sonority to
18 choose the work schedule.

19
20 **Year 1999 to**

	2002	Year 2003	Year 2004	Year 2005
Day	Start hour	Start hour	Start hour	Start hour
23 Sat	0700	0700	0700	Day Off
24 Sun	0700	0700	0700	0700
25 Mon	1500	1500	1500	Day Off
26 Tue	1000	Day Off	Day Off	0500
27 Wed	700	Day Off	Day Off	1900
28 Thurs	Day Off	2300	0430	1500
29 Fri	Day Off	2300	0430	1600

30
31 In year 2005, Plaintiff put in request for reassignment to drive. It was denied at first.
32 Plaintiff filed grievance. The grievance was also denied first. Then later, only
33 allowed Plaintiff to go back as a Part-Time driver.

34 There was no reason not to allow the Plaintiff go back to drive. When the Plaintiff
35 go back to drive, Plaintiff's clerk position would be opened for bid. In 2005, after
36 the plaintiff went back to drive, four drivers made the bid for the clerk position.

37
38 5 Mr. Chadha stated that no call in overtime policy; but, Mr. Chadha called in Mr. William
39 Jones in for overtime. When Mr. Paulk called the Plaintiff in for overtime. Mr. Chadha
40 threatened Mr. Paulk that he would receive a warning letter if he continued to call Plaintiff

1 No. 07-2747 IS

2
3 Date: June 12, 2008

4
5 Mr. Chadha honored Mr. William Jones grievance but denied the Plaintiff's grievance
6 when the grievance was the same in violation of Article 1 & 8.

7 Different grievance settlement for different employee at his disposition. (Mr. Chadha's
8 deposition, page 50 line 25 to page 51 line 6, and Exhibit 5 & 6)

9
10 6 In the traffic control office, there should be two clerks for each shift. One clerk would
11 control the line drivers to deliver mails to the stations, airport or shipyard. The other clerk
12 would control the 134 stalls and the jocky drivers to move the fully loaded trackers
13 to storage and replace either empty or loaded trailer. When there is only one clerk
14 on duty, Supervisor would have to perform Clerk's position. There was grievance
15 settlement at Washington that only allow relief each clerk for lunch break (30 miins/1 hour
16 each tour) See Exhibit k.

1 CASE NO. 07-02747 SI

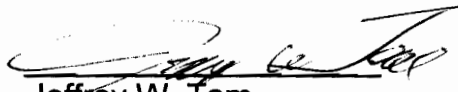
2
3 CERTIFICATE OF SERVICE

4 The undersigned hereby certifies that he is an employee of the United
5 States Postal Services. The undersigned certifies that this reply is
6 served by hand delivery..

7
8 To: Clerk, United States District Court
9 450 Golden Gate Avenue, Box 36060
10 San Francisco, California 94102
11
12
13
14
15
16

17 I declare under penalty of perjury under the laws of the United States
18 that the foregoing is true and correct.

19 Executed on June 12, 2008 at Alameda, California
20

21
22 
23 Jeffrey W. Tam

24
25 408 Yorkshire Road
26 Alameda, Ca 94501
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44